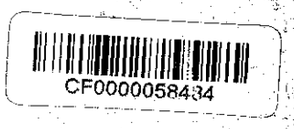
CRA. 965/94 ST. 69/93 (4)

7-3-94, Bilaspur

XII-189/(Jail)
C. J. P. R /7-86/500

RECEIVED FROM JABALPUR



APPEAL OF PRISONER

No 1936/49 Name शुक्लाररसिंह

Father's name रामभरोस गोंड

Residence ग्राम-भेदरापारा थेलतरा थाना-रतनपुर जिला- बिलासपुर (म०प्र०) Age 38 वर्ष

Sentenced to आजीवन कारावास on 7.3.94

Under section 302 भा०दं०वि० by माननीय तृतीय अतिरिक्त सत्र न्यायाधीश, बिलासपुर (म०प्र०) सत्र प्रकरण क्रमांक-69/93

Division Bench (Criminal)

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appelate court will not proceed with the case for seven days unless the legal paactitioner appears earlier. If the legal practitioner does not appear within seven days, he may not be heard at all if the prisnor states that he does not wish to be represented by legal practitioner, the court may proceed at once wich the case and will not be obliged to give at hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement बन्दी ने निर्णय दिनांक को न्यायालय से स्वयं प्राप्त किया
2. Date of which copy received 7.3.94
3. Date on which Appeal sent 11.3.1994
4. Whether the prisoner wishes to be represented or not- (yes/~~No~~)

No. 1936/49 Name शुक्लाररसिंह उ०रामभरोस

Confined in जिला जेल प्रथम श्रेणी, बिलासपुर (म०प्र०)

No. 113/प्रो०फ०/94/बिलासपुर Dated दिनांक 11.3.1994 98

Forwarded to the ~~CHIFF JUDICIAL MAGISTRATE~~ रजिस्ट्रार, माननीय उच्च न्यायालय, मध्यप्रदेश, जबलपुर (म०प्र०) together with a copy of Judgement and order passed in the case for favour of transmission to the proper Appelliate Court.

3325-26
11/3/94
Superintendent
जिला जेल प्रथम श्रेणी
बिलासपुर (म०प्र०)

Date of receipt in C. J. M. S. Office

Date of receipt of record to accompany the)
The memo of Appeal of the Appellate Court.)

No. Dated 98

Forwarded to the

C J Magistrate

Date of receipt in Appellate Court

(P. T O)

High Court of Madhya Pradesh
JABALPUR
Rec'd on 17 MAR 1994
254

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 965/94 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH
HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

Criminal Appeal No. 965 of 1994

Appellant : Shukrawar Singh

Vs.

Respondent : The State of Madhya Pradesh

Shri M.P.S.Bhatia, learned counsel for the appellant.
Shri G.K.Beriwal, learned Dy. Advocate General for the State/respondent.

ORAL JUDGMENT
(Delivered on 18th January 2006)

L.C.Bhadoo, J

By this appeal under section 374 (2) of the Code of Criminal Procedure the accused/appellant has questioned the legality of judgment of conviction and order of sentence dated 07.03.1994 whereby the learned 3rd Additional Sessions Judge, Bilaspur in S.T. No. 69/93 after holding the accused/appellant guilty for commission of offence under section 302 of the Indian Penal Code has sentenced him to undergo imprisonment for life.

2. The prosecution case, in brief, necessary for disposal of this appeal is that in village Beltara, Bhadrapara there was adjacent agricultural field of deceased Ram Kumar and accused Shukrawar Singh which were adjacent to the government land. The said government land was encroached upon and was being cultivated by the deceased as

SDES/2005

(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.A.:965/94.... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

well as the accused. The rain water used to flow towards the field of Shukrawar Singh through the government land upon which encroachment was made by Ram Kuamar, therefore, there was a dispute regarding the flow of rain water on account of the obstruction created by Ram Kumar as the flow of rain water to the field of Shukrawar Singh was stopped. On the fateful day i.e. 18.8.1992 Ram Kumar left for his agricultural field and his wife had also left the house. At about 8.30 a.m. accused Shukrawar Singh was coming from the side of field of Ram Kumar carrying Lathi in his hand and was shouting that he has committed the murder of Ram Kumar with Lathi. He was going towards the house of village Kotwar Vijay. The shouts raised by Shukrawar Singh was heard by Lachhiram (PW-1), Chandram (PW-2) Jugmatibai (PW-4) wife of the deceased, Sone Bai (PW-5), Laxman (PW-6), and Khelanbai (PW-9). The daughter of the deceased Shyamabai went towards the agricultural field of her father Ram Kumar and saw the dead body of her father and the injuries were present on his head. The brain material was coming out of the skull and there was excessive bleeding. The accused went to the house of village Kotwar Vijay and from there he was taken to the Police Station. PW-1 Lachhiram made the report P-1 in Police Station Ratanpur before Station House Officer namely M.A. Khan (PW-10) who after registering the case left for the scene of occurrence and prepared the Panchnama of the body P-6. The S.H.O. took into possession the plain soil and blood stained soil from the place of the occurrence. The weapon of offence i.e. Lathi was taken into possession under P-7. The dead body of Ram Kumar was sent for post mortem examination. Dr.

(16)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. 965/94 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Harish Thavrani (PW-8) conducted post mortem examination and prepared the post mortem report (P-12). After completion of the investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Bilaspur who in turn committed the case to the Sessions Judge, Bilaspur from where learned 3rd Additional Sessions Judge received the case on transfer for trial.

3. Prosecution in order to establish the charge against the accused/appellant examined as many as 10 witnesses. Statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence appearing against him and stated that he is innocent and has been falsely implicated in the crime.

4. The learned Additional Sessions judge after hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant has convicted and sentenced the accused as mentioned in paragraph 1 of this judgment.

5. Homicidal nature of death of Ramkumar is not in dispute.

6. As far as the involvement of the accused/appellant in committing the murder of Ram Kumar is concerned, the whole case rests on the extra judicial confession made by the accused as there is no ocular evidence connecting the accused with the crime of murder of Ram Kumar. In order to base the conviction on extra judicial confession the same must be voluntary, true and prompt.

7. Learned counsel for the accuse/appellant argued that in this case Kotwar-Vijay to whom the accused went along with Lathi, the weapon of offence, has not been examined in order to corroborate

(12)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr. A. 265/94 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the evidence of Jugmati Bai (PW-4), Sone Bai (PW-5) and Laxman (PW-6), therefore, based on the evidence of these three witnesses the accused/appellant cannot be held guilty. He also argued that though the witness to the recovery of the weapon of offence i.e. Lathi has been examined but he has not supported the case of the prosecution that blood was present on Lathi and has been declared hostile, therefore, the conviction recorded by the trial Court is not based on any legal evidence.

8. On the other hand Mr. G.K. Beriwal and Mr. Deo, learned counsel appearing on behalf of the State have supported the impugned judgment of conviction and sentence.

9. In order to appreciate the arguments advanced by the respective counsel we have scrutinized the evidence. PW-4 Jugmatibai has stated in her evidence that the deceased was her husband and on the fateful day she along with Sone Bai went to the agricultural field of others. Her husband went to the agricultural field at Tikra. When she reached near the pond she saw the accused coming from the side of their agricultural field shouting that he has murdered her husband. The accused was carrying Lathi in his hand and was going towards village Beltara. After hearing the shouting she came back to her house and by that time her daughter Shyama had already left for the agricultural field to see the body of Ram Kumar. In the cross examination she has stated that the accused did not stop while passing near them and also did not talk to Sone Bai. PW-5 Sone Bai has corroborated the evidence of Jugmati Bai (PW-4) and stated that when they reached near the pond they saw that accused Shukrawar Singh was coming shouting that he has

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A.965/94 ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

murdered Ram Kumar and he was coming from the side of agricultural field and was going towards the house of Kotwar-Vijay carrying Lathi in his hand. In the cross examination she has stated that she along with Jugmatibai were going together, the accused was at distance of 4 to 5 ft. from them. It is correct to say that the accused came running and went and she went to see Ram Kumar towards the side from which the accused/appellant came shouting. PW-6 Laxman has also corroborated the evidence of Jugmatibai and Sone Bai and has stated that at about 8.00 a.m. when he was returning from his agricultural field he saw that Shukrawar Singh came shouting that he has murdered Ram Kumar and he was carrying Lathi in his hand and went towards Beltara. He had not inquired anything from Shukrawar Singh and he went to the agricultural field to see the dead body. Number of persons had gathered there and he saw the body of Ramkumar lying there.

10. In the cross examination of these three witnesses the defence has not elicited anything which makes the evidence of these three witnesses unreliable or untrustworthy. It is true that Kotwar Vijay to whom the accused went has not been examined by the prosecution. However, the non examination of Vijay does not affect the evidence of these three witnesses. PW-10 M.A. Khan, Sub Inspector has stated that on 18.8.1992 he was working as S.H.O. Police Station Ratanpur and on that day at about 11.00 a.m. Lachhiram came and lodged the report P-1 and he left for the scene of occurrence and saw the body of Ram Kumar there. He has further stated that on being produced by the accused, he took into possession the Lathi, weapon of offence under P-7 which

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... Cr.A. 965/94 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

bears his signatures. Even though the recovery witness Bahorikdas has turned hostile and Ramji was not examined, but investigating officer has proved the recovery of memo and has categorically stated that accused himself produced the Lathi. Dr. Harish Thavrani (P.W.8) has stated that he conducted postmortem on the body of Ram Kumar and noticed as many as seven injuries, on 26.08.1992 he examined the Lathi, the weapon of offence and opined that it was possible to cause all the injuries found on the body of Ram Kumar with the Lathi in question and the report is P-14. Therefore, in view of this the evidence of the doctor and recovery of the Lathi from the possession of the accused lend support to the extra judicial confession made by the accused before the witnesses namely Jugmatibai (P.W.4), Sone Bai (P.W. 5) and Laxman (P.W.6).

11. In view of the above discussions, we are of the considered opinion that there is no illegality or infirmity in the findings recorded by the trial Court convicting the accused/appellant for commission of murder of Ram Kumar and the same does not require any interference by this Court, therefore, the appeal is devoid of merits and the same is liable to be dismissed and it is hereby dismissed.

12. The Registry is directed to send the copy of this judgment to the accused/appellant who is in jail.

Sd/-
L.C. Bhadoo
Judge

Sd/-
DHIRENDRA MISHRA
Judge

SP/FS/2005 - 20,000

YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.06 10:39:09 +0530